

Before the
Federal Communications Commission
Washington, D.C. 20554

ORIGINAL

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Station
(St. Maries, Idaho)

)
) MM Docket no. 96-249
) Rm-8926
)
)

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To: John A. Karousos, Chief
Allocations Branch
Mass Media Bureau

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Reply Comments of Pentacle Investments Inc.

Pentacle Investments, Inc. ("Pentacle"), by and through counsel, hereby responds to comments filed in the above-captioned proceeding by Spokane Public Radio, Inc. (hereinafter "SPR") opposing the allocation of Channel 221A to St. Maries, Idaho. SPR's objections are without merit and should be rejected for the following reasons.

BACKGROUND

1. In response to a Petition for Rule Making submitted by Pentacle, the Commission released a Notice of Proposed Rulemaking ("NPRM") on December 13, 1996 (DA 96-2045), in which it proposed to amend the FM Table of Allotments by adding Channel 221A at St. Maries, Idaho. This allotment would provide St. Maries with its first local FM broadcast service. On January 31, 1997, Pentacle filed Comments stating that it supported the allocation and would promptly apply for the channel once the allocation was made. SPR, licensee of non-commercial Stations KSFC and KPBX in Spokane, filed comments opposing the allocation of Channel 221A to St. Maries contending that the allocation conflicted with its pending application to improve Station KSFC. SPR contended that instead of allocating channel 221A to St. Maries, Channel

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278A should be allocated thus removing the conflict with its proposal to upgrade one of its two Spokane stations. However, as set forth in the attached engineering statement, although the allocation of channel 278A to St. Maries hypothetically meets all of the Commission's technical criteria, there is no site available, in reality, from which to operate.

2. Thus, Pentacle's engineering consultant has shown that, based upon an on site inspection, no road exists to the site utilized by SPR in its alternative proposal. Moreover, there is no electricity available within 4 kilometers of the reference coordinates. In addition, as set forth in the Engineering Statement, the reference point is owned by a timber conglomerate and no site is available for rent, purchase or lease, nor is an easement available for electricity or a road. Finally, the engineering consultant unequivocally states that, "No space for a transmitter site is available at which both the spacing requirements would be met and a city grade contour could be placed over the city of license." Engineering Statement, p. 2. In fact, the consulting engineer indicates that Channel 278 was considered at the time the petition for rulemaking was filed, but was ruled out despite the fact that it could theoretically be allocated at a higher class channel because no usable site could be located due to terrain, utilities and access. In sum, while Channel 278 theoretically meets the Commission's technical requirements there is no usable site available from which to operate. In a somewhat similar situation the Commission has stated:

..., it is appropriate for us to distinguish between authorized service and actual service in these circumstances, where the authorized service has not been, and cannot be, instituted. After all, legal fictions are only useful up to a point. In this case [the petitioner's] theory would produce an absurdity.

Gareth F. Garlund, 44 RR 2d 1374, 1375 (1978).

3. Consequently, as shown in the attached Engineering Statement, the only channel which

would allow a station to be constructed at St. Maries in full compliance with the Commission's Rules is Channel 221. This allocation will clearly serve the public interest because it will provide St. Maries with its first local FM service. St. Maries needs this first service more than Spokane needs an additional service as proposed by SPR.

WHEREFORE, the premises considered, the NPRM and its proposed allocation of Channel 221A to St. Maries, Idaho, should be granted and the opposition of SPR rejected.

Respectfully submitted,
PENTACLE INVESTMENTS, INC

Leonard S. Joyce _{ws}

By: /s/ Leonard S. Joyce
Leonard S. Joyce
Law Offices of Leonard S. Joyce
5335 Wisconsin Ave., N.W.
Suite 400
Washington, D.C. 20015-2003

Its Attorneys

February 18, 1997

ENGINEERING STATEMENT

The following engineering statement and attached exhibit have been prepared for **Pentacle Investment Company** and are in support of their reply to comments filed concerning an FM Broadcast allocation at St. Maries, Idaho. (MM Docket 96-249, RM-8926)

Spokane Public Radio, Inc. (hereinafter "KSFC") has filed an application with the Commission to modify that station. That application is mutually exclusive with the petition by Pentacle Investment Company for a first FM Broadcast allocation for St. Maries, Idaho. KSFC offered a technical statement which claimed that an alternate channel existed which could be used to serve St. Maries and which would allow both the new allocation and the additional service for KSFC.

The KSFC comments show that Channel 278 can be assigned to St. Maries, Idaho fully in accordance with the Commission's spacing requirements and provide the required level of signal over the city of license. Exhibits were included to show service contours from a station located at the reference coordinates. KSFC is correct in stating that the allocation could be made at the coordinates shown in their exhibits. However, such an allocation would be equivalent to an allocation which had to be located off-shore. The site in this case would be equally unusable.

The attached exhibit demonstrates the area within which the station would have to be located to meet the Commission's spacing requirements. The map also indicates that an unimproved road would pass the site. However, an on site visit has determined that such is not the case. The road actually terminates approximately 0.3 kilometers from the highway at the St. Maries Municipal Landfill. No road exists past that point. In addition, there is no electrical service within 4 kilometers of the reference coordinates.

The reference site is owned by a conglomerate in the timber industry. No site is available for rent, purchase or lease. No easement is available for electrical power or a road. Essentially all of the area meeting the spacing requirements within a reasonable distance is owned by the same timber company. No space for a transmitter site is available at which both the spacing requirements would be met and a city grade contour could be placed over the city of license. The nearest location where electricity is reasonably available that would also meet the spacing requirements would be along the St. Joe River North-east of the reference site. That location would be down in the river valley approximately 18 kilometers from St. Maries. City grade service could not be provided due to both the distance and intervening high terrain.

A study was made to determine if it would be possible to locate the actual station West of the reference coordinates along the highway where electricity and access would be available. The provisions of Section 73.215 of the Commission's Rules and Regulations would permit such an application to be accepted if adequate contour protection could be provided to other stations. It was found that such an operation would violate Section 73.215(e) regarding spacing to KCDA in Coeur d' Alene, Idaho. If the site were to be moved further South along the highway to a point which would comply with Section 73.215(e), it would not be possible to provide the required city grade signal due to intervening terrain. Therefore, Ch. 278 is simply not usable under any provision of the Rules and Regulations due to terrain, utilities and access.

Channel 278 was considered at the time of the original petition for rulemaking. In fact, it was found that Ch. 278 could be allocated as a higher class channel. However, its reference location would then have been more than 16 kilometers from either electricity or a road. Obviously, that allocation would not have been usable. As stated earlier, the allocation of Ch. 278 to St. Maries is the same as an allocation which would place the reference coordinates far off shore. It might comply with the rules but it could not be built.

The only channel which would allow a station to be constructed at St. Maries fully in compliance with the Commission's rules and regulations is Ch. 221 as originally requested. It is respectfully submitted that first service to a community has always taken precedence over improvement to an existing station. That same principle should apply in this case, especially since Spokane Public Radio, Inc. has another station, KPBX-FM, which provides service to Spokane. The comparison in this case is between first FM broadcast service to a community and improvement to the second service offered by the same licensee.

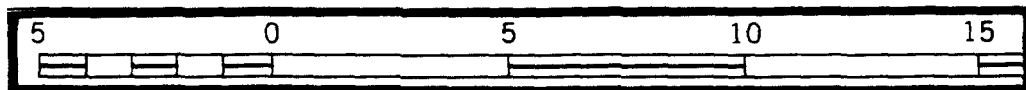
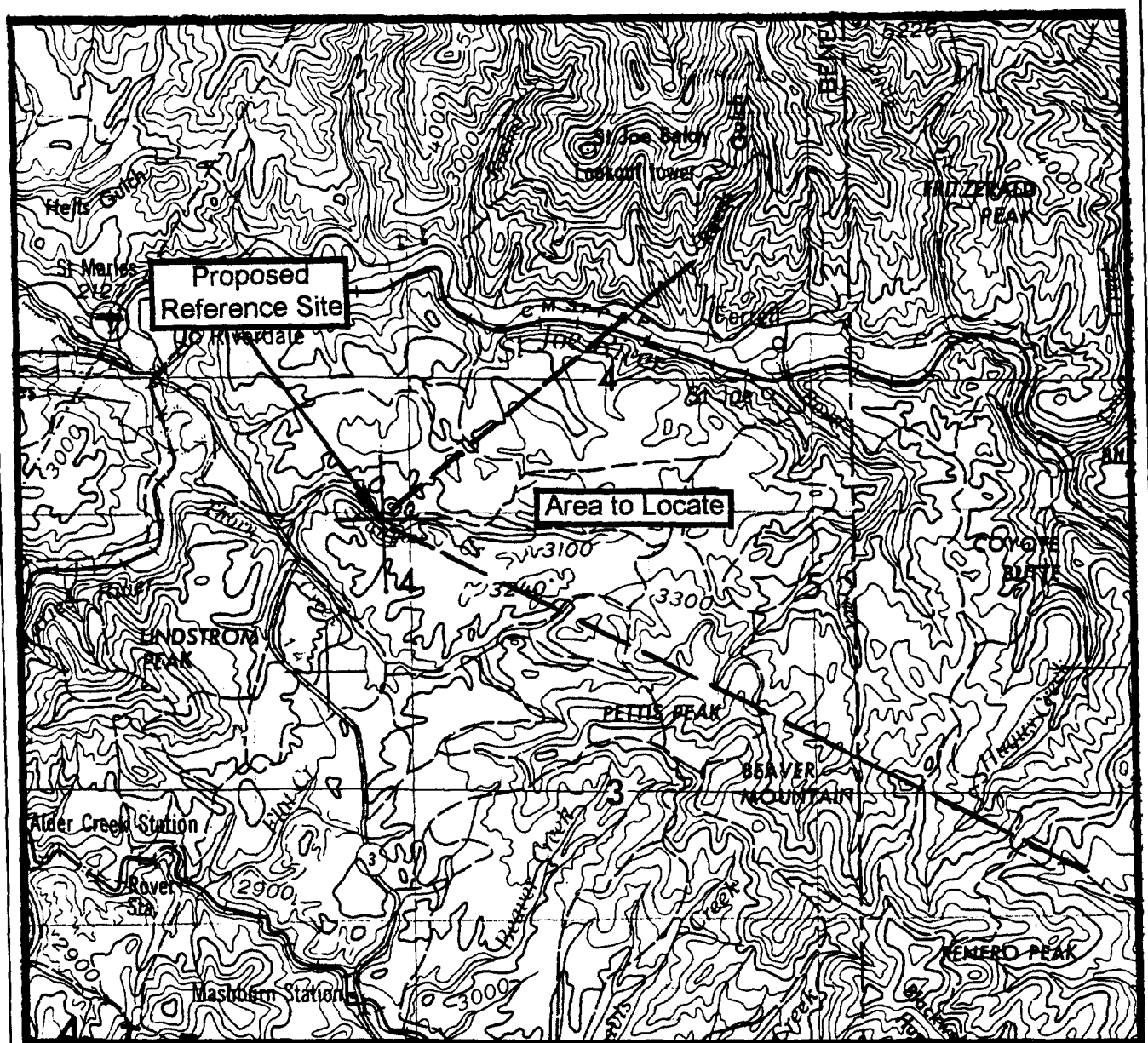
The preceding statement and attached exhibit were prepared by me or under my direction and are true and correct to the best of my knowledge and belief.


Donald L. Markley, P.E.

Subscribed and sworn to before me this 14 day of February, 1997.


Notary Public






Site Location Map
Permissible Area to Locate
Proposed NEW FM Station
Pentacle Investment Company
Saint Maries, Idaho
February, 1997

Certificate of Service

I, William D. Silva, hereby certify that I have this 18th day of February, 1997, sent via first class United States mail, postage prepaid, a true copy of the foregoing Reply to Comments to:

Ms. Nancy Joyner
Federal Communications Commission
Policy and Rules division
Mass Media Bureau
2025 M Street, N.W.
Room 8314
Washington, D.C. 20554

Richard Kunkel, President and General Manager
KPBX-FM
2319 North Monroe Street
Spokane, WA 99205-4586


/s/ William D. Silva
William D. Silva